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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 91217941 |
| Party | Defendant Phillip Theodorou and Anna Theodorou |
| Correspondence Address | PHILLIP THEODOROU ANNA THEODOROU 446 EWINGVILLE RD EWING, NJ 08638-1539 UNITED STATES Weprinttheworld@gmail.com |
| Submission | Motion to Dismiss 2.132 |
| Filer's Name | phillip Theodorou |
| Filer's e-mail | Weprinttheworld@gmail.com |
| Signature | /phillip theodorou/ |
| Date | 11/25/2015 |
| Attachments | 2015 11 25 Motion to Dismiss 91217941.pdf(91061 bytes) |

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Robert Kirkman, LLC, (Plaintiff)

v.

Anna Theodorou, (Defendant) and

Phillip Theodorou, (Defendant)

Phillip Theodorou
446 Ewingville Rd.

Ewing, NJ 08638

609-352-9474

WePrintTheWorld@gmail.com

November 25, 2015

Re: Opposition No. 91217941

MOTION TO DISMISS PLAINTIFF’S OPPOSITION DUE TO UNCLEAN HANDS

Pursuant to the doctrine of unclean hands, “a plaintiff [must] act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim.” (Kendall-Jackson Winery, Ltd, supra, 76 Cal. App.4th at 979.) The doctrine of unclean hands also applies to bad faith conduct by the plaintiff in connection with the matter in controversy. (Fladeboe v. American Isuzu Motors, Inc. (2007) 150 Cal.App.4th 42, 56.) The Plaintiff has proven to use unethical, and unfair tactics in bad faith during the normal course of business, in connection to this matter in controversy, and is attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the Plaintiff.

There is contradictory evidence in the record that is beyond informality. On December 17, 2013, and in accordance with Section 1 of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1051(b) the Plaintiff filed the application serial no. 86/145,914 with an “intention to use the mark” in commerce for The Walking Dead trademark in Classes 16, 20, 25 and 28. The foregoing application was signed under the declaration warning the signer that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration. Then, on August 20, 2014 the Plaintiff filed an amendment to allege use in commerce under Section 1 of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1051(a) as a basis, and

fraudulently alleged first use in commerce by predating the Amendment to Allege Use indicating that goods were used in commerce prior to the Application's filing date. An applicant who adds or substitutes use in commerce under §1(a) as a basis must verify that the mark is in use in commerce on or in connection with the goods/services covered by the §1(a) basis, and that the mark was in use in commerce on or in connection with these goods/services "as of the filing date of the application." 37 C.F.R. §2.34(a)(1)(i.) The Plaintiff has recklessly backdated and alleged first use in commerce for all amended goods with the intent to deceive the public to believe that all of the goods have somehow entered into commerce prior to the filing date of the application. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application. 37CFR 2.2.86(a)(3) (2012.) The Plaintiff's misconduct of bad faith is fraudulent, and is connected with Opposition No. 91217941. The doctrine of unclean hands applies to bad faith conduct by the plaintiff in connection with the matter in controversy. (Fladeboe v. American Isuzu Motors, Inc. (2007) 150 Cal.App.4th 42, 56.)

Federal regulations govern the use of the designations "TM" or "SM" or the "®" symbol. Applicants may only use the federal registration symbol "®" after the United States Patent & Trademark Office actually registers a mark, not while an application is pending, and it may only be used on or in connection with the goods/services listed in the federal trademark registration and while the registration is still alive. The Plaintiff has and is currently using unethical tactics in commerce. The plaintiff currently has a suspended application with the United States Patent & Trademark Office for the use of The Walking

Dead trademark on lottery tickets, t-shirts and other goods. The Plaintiff is actively selling these goods bearing The Walking Dead mark and displaying the “®” symbol, and indicating to the public that The United States Patent & Trademark Office has registered the Plaintiff’s application serial no. 86/145,914 when the application has been suspended.

In an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted, AMC sent a letter dated April 7, 2014 to the Defendant claiming to own ALL rights to ALL products and services bearing the mark “The Walking Dead” and wrote in connection with the Defendant’s application to register the mark “The Walking Dead” in classes unrelated to AMC’s registered trademark. The letter also indicated that if the defendant did not expressly abandon ownership, promptly discontinue and permanently refrain from using the Defendant’s Mark or assign the Defendant’s Mark over to AMC within (7) days this issue would no longer be resolved amicably, and notwithstanding the U.S. Trademark (Lanham) Act, AMC’s Representatives will take any steps necessary to force the Defendant to comply.

In an article published September 11th titled, “The Walking Dead Started Due To Robert Kirkman's HUGE Lie,” the author [Adam Carlson](#) refers to the statement made by the Plaintiff during an interview that [Robert Kirkman, LLC did with IGN](#), when the Plaintiff described himself as “shady.” This statement publically described the Plaintiff’s view of himself, and the unethical, illegal and unfair tactics used by the Plaintiff that threatens to plague this opposition if allowed to continue.

For the reasons stated herein, the Defendants respectfully request that the Board dismiss Opposition No. 91217941 due to unclean hands.

I hereby certify that a true and complete copy of the foregoing Motion to Dismiss Opposition No. 91217941 has been served on James D. Weinberger by mailing said copy on November 25, 2015 via First Class Mail, postage prepaid to:

Fross Zelnick Lehrman & Zissu, P.C.

866 United Nations Plaza

New York, NY 10017

A handwritten signature in black ink that reads "Phillip Theodorou". The signature is written in a cursive style with a horizontal line underneath it.

Phillip Theodorou

JH